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Enclosure 6c2
May 14, 2019

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May 14, 2019

TO: Members of the Council on Elementary and Secondary Education

FROM: Amy Beretta, Appeals Committee Chair

RE: Approval of Appeals Committee Recommendation on the matter of
Newport School Committee v. RIDE

The Appeals Committee of the Council on Elementary and Secondary Education met on April 23, 2019, to hear oral argument on the appeal of the following Commissioner decision:

Newport School Committee v. RIDE

RECOMMENDATION: THAT, in the matter of Newport School Committee v. RIDE, the Commissioner's decision is affirmed, as presented.

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STATE OF RHODE ISLAND

**COUNCIL ON ELEMENTARY
AND SECONDARY EDUCATION**

NEWPORT SCHOOL COMMITTEE

vs.

**RHODE ISLAND DEPARTMENT OF
ELEMENTARY AND SECONDARY
EDUCATION**

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DECISION

This is an appeal by The Newport School Committee (“Newport”) from the Commissioner of Education’s (“Commissioner”) denial of a request for a four (4) day reduction in the school year for students attending Newport schools.

There was no hearing and consequently no finding of facts at the Rhode Island Department of Education (“RIDE”). Background is obtained exclusively from the correspondence and representations of the parties. By letter dated January 31, 2019, Newport Superintendent Jermain wrote to the Commissioner requesting a waiver from making up four (4) school days that were lost due to a natural gas emergency in the City of Newport. By letter dated February 20, 2019, the Commissioner denied the request for the waiver pursuant to R.I.G.L. §16-2-3 and the Regulations Governing the School Calendar and Length of School Day, 200-RICR-20-05-1. Subsequently, by letter dated March 14, 2019, Newport filed this “Appeal of the Commissioner’s Letter.” Newport asks the Council on Elementary and Secondary Education (the “Council”) to overrule the Commissioner’s denial of the waiver request. As further justification for the request, Newport asks the Council to waive the requirement that an alternative learning plan (in this case the specific work done by the students during the school closures) be approved in advance by the Council as required under §16-2-2(c).

The Commissioner filed a motion to dismiss Newport's appeal. The Commissioner asserts that the denial of the waiver is a declaratory order pursuant to R.I.G.L. §42-35-8 and is only subject to judicial review for abuse of discretion. *See* R.I.G.L. §42-35-8(d). Further, the Commissioner contends that Newport failed to cite any legal authority for the Council's jurisdiction to entertain an appeal. Newport counters that the Council may consider an appeal of the Commissioner's denial pursuant to §16-39-1, §16-39-2, §16-39-3, §16-60-9 (viii), and §16-2-3.

We have reviewed the party's briefs, and considered the oral arguments presented. The Procedural Rules for Appeals from Decisions of the Commissioner authorize an appeal by a party aggrieved by a final decision of the Commissioner pursuant to R.I.G.L. §§ 16-60-6(9)(vii) and (viii). *See* 200-RICR-30-15-4.4(A)(1). The regulation is authorized by §16-60-4(a)(9)(viii) which allows the Council to decide and determine appeals from decisions of the Commissioner. R.I.G.L. §§ 16-60-6(9)(vii) and (viii) must be read in conjunction with the Council's authority to hear appeals from decisions of the Commissioner pursuant to §16-39-3 which allows the Council to hear appeals from decisions of the Commissioner "in these matters." While "in these matters" is not further defined, it immediately follows §16-39-1, authorizing the Commissioner to conduct hearings and determine appeals from parties with a dispute arising under laws relating to education to appeal to the Commissioner, and R.I.G.L. §16-39-2 which allows the Commissioner to conduct hearings and determine appeals from decisions of a school committee.

In each of the appealable instances pursuant to §16-39-3 the Commissioner is hearing a dispute, making findings of fact and conclusions of law, and deciding the outcome. The plain language of the statutes cited by Newport does not contemplate circumstances where the Commissioner is a party to the dispute. Therefore, there is no jurisdiction for the appeal pursuant to R.I.G.L. §16-39-1, §16-39-2, §16-39-3, and §16-60-9(viii).

Newport also relies on R.I.G.L. §§ 16-2-3 to prove jurisdiction for the appeal, arguing that jurisdiction must be present since the statute gave the Council authority to approve the reduction in school days. However, the Council has delegated that authority to the Commissioner, within certain parameters, by passing the Regulations Governing the School Calendar and Length of School Day. 200-RICR-20-05-1. Notably, the Council's delegation under the Regulation contained specific circumstances (which do not apply in this matter) and did not include a right of appeal. Even in the presence of jurisdiction otherwise, the Council's delegation without a right of appeal eliminated jurisdiction for further review.

We need go no further. We agree with the contention of the Commissioner that Newport has failed to present any justification for jurisdiction to appeal the Commissioner's denial of a request for a reduction in school days. Therefore, we must deny and dismiss the appeal for lack of jurisdiction.

For the reasons stated herein, Newport's appeal is denied and dismissed.

The above is the decision recommended by the Appeals Committee after due consideration of the memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on April 23, 2019.

Council on Elementary and Secondary Education

Daniel P. McConaghy, Chair

_____, 2019

Amy Beretta, Appeals Committee Chair

_____, 2019